("progestin is not administered").

A proposed count for an interference with '736 is:

Claim 1 of US Patent 5,468,736

or

claim 12 of US Patent 5,468,736

or

Claim 13 of US Patent 5,468,736

or

Claims 42, 45, or 46 of the instant application.

As for 35 USC § 135(b), there can be no doubt that this statutory section is satisfied. Claims 42, 45, and 46 were originally filed in this application on June 5, 1995 (prior to the issue date of '736 which is November 21, 1995) and then refiled on May 8, 1996, well within the one year period specified in § 135(b).

All claims of '736 (claims 1-20) would correspond to the count in the proposed interference.

The examiner will note that the inventor of US Patent 5,468,736 is Gary D. Hodgen who is named as a co-inventor of the instant application. Moreover, representatives of Gary D. Hodgen are copying the file history of this application despite the fact that Mr. Hodgen has assigned his rights in this application to assignee. It is clear that a dispute is involved which necessitates resolution by an interference. The examiner is urged to expedite declaration of such an interference.

Claim 49

This claim is drawn to fertility control by administering progestin and anti-progestin. This claim clearly conflicts with the claims of US Patent 5,622,943 which also names as the sole inventor Gary D. Hodgen. For all of the reasons stated above, an interference is ripe and necessary. Again, the examiner is encouraged to expedite declaration of the same.

The proposed count for this interference is:

Claim 1 of US Patent 5,622,943

or

Claim 13 of US Patent 5,622,943

or

Claim 14 of US Patent 5,622,943

or

Claim 18 of US Patent 5,622,943

or

Claim 19 of US Patent 5,622,943

It should be noted that all claims of '943 utilize the term "progestin-only," whereas claim 49 of this application simply recites "progestin." Clearly, the same inventions are being claimed.

The meaning of "progestin-only" in '943 is clear. See, for example, column 1, lines 56-32, i.e., it refers to the administration of progestin without estrogen. Claim 49 of this application, clearly encompasses such progestin-only fertility control. This is clear in view of the claim on its face, i.e., there is no requirement that estrogen be administered. The claim reads on both progestin with and without estrogen. This is especially clear by reference to the specification which explicitly states that the fertility control methods of the invention encompass "estrogen and/or progestin oral doses" (page 3, line 29), "estrogen and/or progestin (page 9, line 18), etc. Thus, claim 49 of the instant application encompasses the progestin-only claims of '943.

The subject matter of the instant application is drawn to the same invention as that of '943 even under a two-way distinctness test, if such is used in determining whether to declare an interference. Thus, if claim 49 in this application is prior art, it clearly suggests the subject matter of '943 since a method of fertility control involving administration of "progestin" (with or without estrogen) and anti-progestin clearly suggests the '943 subject matter which relates to the administration of progestin (without estrogen) and anti-progestin. Clearly, the patent's method of progestin-only fertility control, which also involves administration of anti-progestin, clearly suggests a method involving administering "progestin" and anti-progestin. The same inventions are involved

and an interference is in order.

In the interference, all 21 claims of '943 would correspond to the proposed count.

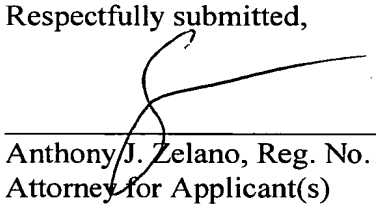
As for 35 USC § 135(b), there is no question that its requirements are met. Claim 49 in this application was also first added on June 5, 1995 and then readded on May 8, 1996. Both of these dates are before the issuance of '943 (April 22, 1997).

As for 37 CFR § 1.608, only subsection (a) is involved because the effective filing date of the instant application is before the earliest alleged date of both '736 and '943. Applicants hereby allege that there is a basis upon which applicant is entitled to a judgment relative to the patentee both with respect to '736 and '943.

Finally, the examiner is referred to US 09/395,982 which copies claims of '736 and is being examined by Examiner Travers of Art Unit 1617, coordination of effort is in order.

No fee is believed to be due with this response, however, the Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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